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INNOVATION DIVISION  
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NEW YORK, NY 10022

EXAMINER
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GREENE, DANIEL LAWSON

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/955,594  
Filing Date: September 05, 2001  
Appellant(s): GINSBERG, PHILLIP M.

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Mark Miller  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed January 22, 2010 appealing from the Office action mailed February 4, 2009.

**(1) Real Party in Interest**

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The following is a list of claims that are rejected and pending in the application:

2, 4 and 6-33 with claims 8, 11, 12, 21 and 30 having been withdrawn.

**(4) Status of Amendments After Final**

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

**(5) Summary of Claimed Subject Matter**

The examiner has no comment on the summary of claimed subject matter contained in the brief.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The examiner has the following comment on appellant's statement of the grounds of rejection to be reviewed on appeal.

Appellant states on page 6 that claims 2, 4, 6, 7, 9, 10, 13-17, 18, 19, 20 , 22-24 32 and 33 are non-statutory subject matter under 35 USC 101. This is incorrect, from the 2/4/2009

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Final Office action., page 6, section 8 reproduced immediately below, only claims 25-32 are rejected under 35 USC 101 as being nonstatutory.

**8. Claims 25-32 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

Claims 25-32 still claim a person. See the discussion of this topic in section 4 above.

Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading “WITHDRAWN REJECTIONS.” New grounds of rejection (if any) are provided under the subheading “NEW GROUNDS OF REJECTION.”

#### **(7) Claims Appendix**

The examiner has the following comments on the copy of the appealed claims contained in the Appendix to the appellant’s brief.

- A. Claims 1, 3 and 5 are cancelled but are still listed in the Appendix.
- B. Claims 8, 11, 12, 21 and 30 are withdrawn and are still listed in the Appendix.

#### **(8) Evidence Relied Upon**

GB2352844A

Beuttell

2-2001

The Clayton Antitrust Act of 1914

Caffrey, States try to deter power price gouging, 4-2001

Energy and Electric Utilities State Laws and Regulations: Price Gouging 10-2004

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

**(9) A. Claims 2, 4, 6, 7, 9, 10, 13-20, 22-29 and 31-33 are rejected under 35 U.S.C. 102(b) as being anticipated by GB 2,352,844,A to Beuttell.**

**Regarding claims 2, 18 and 25,** Beuttell sets forth a method and a computer program comprising the steps of:

by computer, identifying a trade of a traded instrument or item occurring at an outlier price deviating from a benchmark price, the benchmark price being a price or range of prices at which the instrument or item would have traded in absence of market distortion, the identifying being based at least in part on monitoring prices at which trades of the instrument or item occur over a time interval; and

distributing at least a portion of profits earned because of the deviation of the price of the outlier-price trade from the benchmark price, to at least one of a plurality of distributee participants in a market for the traded instrument or item in, for example, The abstract, Fig.25, Page 2 lines 4-18, Page 3 lines 5-13, Page 4 lines 5-18, Page 9 lines 16 and 17, Page 10 line 31 to page 11 line 30, Page 45 lines 19-35, etc.

**Regarding claims 4, 19, 26 and 27** and the limitation distributing the profits attributable to the deviation to at least one of the distributee market participants in

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proportion to a share of profits attributable to the deviation obtained from the distributee market, see for example, page 3 line 24 through page 5 line 3.

**Regarding claim 6** and the limitation the monitoring of prices comprising sampling the trading price at pre-determined intervals, see for example, page 4 line 20 through page 5 line 13.

**Regarding claims 7 and 28** and the limitation wherein the benchmark price is determined based at least in part by determining a running average trading price see for example, page 41, line 24 to page 42 line 20.

**Regarding claim 9** and the limitation wherein the benchmark price is determined based at least in part by determining a mode trading price, see for example, page 33 line 33 to page 35 line 37.

**Regarding claim 10** and the limitation wherein the benchmark price relative to which deviation of the outlier-priced trade is evaluated includes a range of benchmark trading prices, see for example, page 2 lines 4-6.

**Regarding claim 11** and the limitation wherein the benchmark price relative to which deviation of the outlier-priced trade is evaluated includes a last-in-time trading price, see for example, page 3 lines 24-38.

**Regarding claim 13** and the limitation implementing the method in an electronic trading platform see for example, the abstract.

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**Regarding claims 14 and 22** and the limitation wherein the instrument or item includes one or more of electricity, natural gas, energy, and oil see for example, page 1 lines 4-11.

**Regarding claims 15 and 31** and the limitation the monitoring further comprising monitoring a plurality of trading prices, see for example, page 2 lines 4-6.

**Regarding claims 16 and 23** and the limitation wherein the monitoring prices at which trades of the instrument or item occur over a time interval includes monitoring for prices remaining stable within a relatively small percentage range, it must be understood that Beuttell inherently includes this limitation because it is monitoring the prices regardless of what the market is doing or how little it is varying.

**Regarding claims 17, 24 and 32** and the limitation wherein the prices monitored to determine a benchmark price include prices for trades occurring after the outlier-price trade, again Beuttell inherently includes this limitation because it is monitoring the prices continuously which would include trades performed after the outlier-price.

**(9) B. Claims 2, 4, 6, 7, 9, 10, 13-20, 22-29 and 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over The Clayton Antitrust Act of 1914 (hereafter CAA) in view of Both Energy and Electric Utilities State laws and regulations: price gouging AND Caffrey, “States try to deter power price gouging” 4/30/2001.**

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Appellant's invention is directed to an automated process of monitoring and dealing with price gouging. During the 1973 oil embargo, price gouging was discussed at length and laws were enacted to prevent/limit/punish such practices. See for example, NPL "V" State Laws and Regulations: Price Gouging.

Appellant's invention is directed towards the method of ensuring these laws are enforced.

**Regarding claims 2, 18 and 25**, CAA sets forth a method comprising the steps of: identifying a trade of a traded instrument or item occurring at an outlier price deviating from a benchmark price, the benchmark price being a price or range of prices at which the instrument or item would have traded in absence of market distortion, the identifying being based at least in part on monitoring prices at which trades of the instrument or item occur over a time interval; and distributing at least a portion of profits earned because of the deviation of the price of the outlier-price trade from the benchmark price, to at least one of a plurality of distributee participants in a market for the traded instrument or item wherein it is understood that appellants invention is nothing more than the method of ensuring the CAA is enforced.

CAA does not explicitly disclose that a computer performs the method.

Resort may be had to the teaching of the case law, *In re Venner*, 120

USPQ 192 (CCPA 1958) and *In re Rundell*, 9 USPQ 220

"It is not 'invention' to broadly provide a mechanical or automatic means to replace manual activity which has accomplished the same result"

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Accordingly it is prima facie obvious to one of ordinary skill in the art to automate the monitoring of commodities to ensure that the laws are being followed. Further, the laws are applicable regardless of how they are implemented.

**Regarding claims 4, 19, 26 and 27** and the limitation distributing the profits attributable to the deviation to at least one of the distributee market participants in proportion to a share of profits attributable to the deviation obtained from the distributee market, see for example, page 3, section 13b

**Regarding claim 6** and the limitation the monitoring of prices comprising sampling the trading price at pre-determined intervals, this limitation is considered inherent in that it must be performed in order to establish what the normal consumer cost is in order to determine artificial price inflation or price gouging is taking place.

**Regarding claims 7 and 28** and the limitation wherein the benchmark price is determined based at least in part by determining a running average trading price is considered to be a statistically obvious manner of determining a benchmark, See for example, Caffrey page 3, 4<sup>th</sup> paragraph.

**Regarding claim 9** and the limitation wherein the benchmark price is determined based at least in part by determining a mode-trading price is considered to be a statistically obvious manner of determining a benchmark, see for example, Caffrey page 3, 4<sup>th</sup> paragraph.

**Regarding claim 10** and the limitation wherein the benchmark price relative to which deviation of the outlier-priced trade is evaluated includes a range of benchmark trading prices is considered inherent in that the benchmark will change as the market fluctuates. That is, the benchmark cannot statistically remain the same and will wander around the market accepted value.

**Regarding claims 14 and 22** and the limitation wherein the instrument or item includes one or more of electricity, natural gas, energy, and oil, the laws apply to any commodity.

**Regarding claims 15 and 31** and the limitation the monitoring further comprising monitoring a plurality of trading prices, again this limitation is inherent to the laws because NO commodity or price is exempt from the laws.

**Regarding claims 16 and 23** and the limitation wherein the monitoring prices at which trades of the instrument or item occur over a time interval includes monitoring for prices remaining stable within a relatively small percentage range, again this is considered inherent to the monitoring process.

**Regarding claims 17, 24 and 32** and the limitation wherein the prices monitored to determine a benchmark price include prices for trades occurring after the outlier-price trade one must understand that the laws are applicable at all times both during and after the laws are broken. Accordingly this is also an inherent limitation to the laws.

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**(9) C. Claims 2, 4, 6, 7, 9, 10, 13-20, 22-29 and 31-33 are rejected under 35****U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

The claimed invention is not tied to a particular machine or apparatus and does not transform a particular article to a different state or thing.

See *In re Bilski*, 545 F.3d 943, 88 USPQ2d 1385 (Fed. Cir 2008)

Appellant's invention appears to be nothing more than insignificant extra-solution activity which has been, up to this point, performed manually by hand.

It appears that even appellant is of the opinion that the invention does not require an electronic trading platform as evidenced by the reproduction of page 5 lines 9-20 below.

10       ...period -- e.g., one minute, one hour, one day, one week, one month etc. It is most preferred that this system be implemented in an electronic trading platform. Nevertheless, the systems and methods of the invention do not necessarily require an electronic trading platform.

15       It should be noted that the benchmark value, or range of values, may preferably be computed according to any suitable statistical method -- e.g., average, weighted average, median, mode or any suitable metric method. These methods and systems preferably reduce dislocation created by outlying trades and other phenomena that result in trading price spikes.

20       In another example according to the invention, the trading price of electricity for an entire day may spike because of high temperatures occurring during the

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**(10) Response to Argument****(10) A. In Section VII.C.3.b. (beginning on page 10) Appellant argues on page 11:**

“Accordingly, the Final Office Action does not discuss the currently pending claim limitations that include a trade involving a first distributee participant and distributing at least a portion of profits earned from the trade to a second distributee participant. Neither the rejection under 35 USC § 102(b) in the Final Office Action nor the rejection under 35 USC § 102(b) in the Prior Paper discusses a first distributee participant and a second distributee participant. See Final Office Action page 7 and Prior Paper pages 5 and 6.”

**(10) A. Response:**

The Examiner clearly discussed the additional limitations in the 2/4/2009 Final Office action, pages 3-4. Further, the Examiner provided evidence of what is considered the knowledge level of one of ordinary skill in the distribution of profits which does not preempt either official notice OR a new rejection as it merely supports an enabling disclosure of one method of distributing profits made from trading activity.

The use of a secondary reference in connection with a 35 U.S.C. 102 rejection is proper when the secondary reference is cited to show that the primary reference contains an “enabling disclosure”. See MPEP § 2131.01.

*In re Shepard*, 138 USPQ 148 (CCPA 1963)

“In considering disclosure of reference patent, it is pertinent to point out not only specific teachings of patent but also the reasonable inferences which one skilled in the art would logically draw therefrom.”

*In re Nilssen* (CA FC) 7 USPQ2d 1500 (7/13/1988)

“Specifically, Nilssen asserts that “it would be in manifest conflict with reality to assume that such a person would be familiar with all prior art references pertaining to [a] given art... **The board attributes to the “hypothetical person” knowledge of all prior art in the field of the inventor’s endeavor and of prior art solutions for a common problem even if outside that field.** That view accords with the plethora of this court’s precedent. See, e.g., *In re Deminski*, 796 F.2d 436, 442, 230 USPQ 313, 315 (Fed. Cir. 1986); *Standard Oil Co. v. American Cyanamid*

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Co ., 774 F.2d 448, 454, 227 USPQ 293, 297 (Fed. Cir. 1985); In re Wood , 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979). “ (Emphasis added)

**In re Dance** (CA FC) 48 USPQ2d 1635 (10/30/1998)

“When the references are in the same field as that of the appellant's invention, knowledge thereof is presumed. “

In order to clarify the rejection it is important to understand how the specification as filed defines “first distributee participant” and “second distributee participants”.

Per page 1, line 5, “members of a trading environment”,

Per page 2, line 12, “a first trader”, line 13, “other traders”

Per page 3, lines 6-7, “may be shared amongst the participants in the market based upon their trading record in the marketplace”

Per page 6, lines 30-31, “Traders or users...may conduct trading transactions using...”

As evidenced above, per the specification as filed a “distributee participant” is nothing more than a “trader”. There are no limitations as to where these “traders” are employed, or that they must be employed by different firms, or that they are separate entities each and of themselves, etc. Given the broadest reasonable interpretation of the terms, “first and second distributee participants” could be traders from the same firm.

Beuttell clearly discloses a system monitoring trades and price fluctuations of said trades. Accordingly, traders are trading and are thus inherently incurring either a profit or loss. A profit is inherently distributed in some manner. The Examiner relies upon the common knowledge of one of ordinary skill in the art in the distribution of profits of a

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trading firm to include paychecks, bonuses, commissions, etc. as some of the manners in which profits are dispersed in the operations of a trading firm. That is, when a business distributes profits it can do so in many fashions. The Examiner set forth that the process of distribution profits is what happens when a trader working for a firm enters a trade order that is accepted that creates a profit. Now, either the trader keeps the profit for himself, or since he made the trade for the firm, the profit belongs to the firm to distribute it as they see fit. If the firm decides to give the profits back to its employees as bonuses, then the firm is in essence distributing a portion of the profits made from one trader “first distributee participant” to the other traders in the firm. These other traders employed by the same firm can be considered the “second distributee participants” because they can also trade in the same commodities.

Since Appellant’s invention is concerned with distributing profits it is considered that the plethora manners of profit distribution are understood and need not be expounded upon more fully. However a commission is also known in the art of profit distribution to be “a sum paid to an agent in a commercial transaction”. A commission can be based on a set value for each sale, e.g. \$500.00, a percentage of a sale, e.g. 10%, the number of items sold over a certain amount, etc. However, when commissions are issued by a company they may be paid from the profits made by other members of the company because by this time the money is commingled. That is, there is no timeframe as to when the claims require the distribution be made to the second distributee market participant.

**(10) B. In Section VII.C.3.c. (beginning on page 12) Appellant argues on page 12:**

“ The Final Office Action makes no statement that any of the above cited finding of fact regarding the state of the art can be found in Beuttell. Particularly, the Final Office

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Action does not cite Beuttell or any other reference when discussing distributing profits, when discussing paychecks, when discussing bonuses, when discussing commissions, or when discussing any of the above quoted findings of fact regarding the state of the art. Because the Final Office Action provides no citation to Beuttell regarding the above findings of fact regarding the state of the art and because the above cited findings of fact regarding the state of the art cannot be found in Beuttell, the citation is evidence without any evidentiary support.”

**(10) B. Response:**

See the explanation set forth in section (10) A. above. See also **MPEP 2131.01**

The use of a secondary reference in connection with a 35 U.S.C. 102 rejection is proper when the secondary reference is cited to show that the primary reference contains an “enabling disclosure”. See MPEP § 2131.01.

“The court held that the publication taught all the elements of the claim and thus motivation to combine was not required. The patents were only submitted as evidence of what was in the public's possession before applicant's invention.” (*Emphasis added*)

**(10) C. In Section VII.C.3.d. (beginning on page 13) Appellant argues on page 13:**

“Because Official Notice may be used only to elaborate or explain cited prior art and not as a finding of fact regarding the state of the art, and because substantial evidence must be provided for all findings of fact, the Official Notice would be improper even if it could be made in the context of a 35 USC § 102(b) or were made in a 35 USC § 103 rejection. Therefore, no prima facie showing of any rejection of independent claim 2 and independent claim 18 over the combination of Beuttell and the Official Notice is made by the Final Office Action.”

**(10) C. Response:**

See the explanation set forth in section (10) A. above. See also **MPEP 2131.01**

The use of a secondary reference in connection with a 35 U.S.C. 102 rejection is proper when the secondary reference is cited to show that the primary reference contains an “enabling disclosure”. See MPEP § 2131.01.

“The court held that the publication taught all the elements of the claim and thus motivation to combine was not required. The patents were only

**submitted as evidence of what was in the public's possession before applicant's invention." (Emphasis added)**

**(10) D. In Section VII.C.3.e. (beginning on page 14) Appellant argues on page 16:**

“Commissions are given to the sales person responsible for the entry into the transaction and not to any second sales person. Accordingly, "distributing at least a portion of profits' earned because of the deviation of the price of the outlier-price trade from the benchmark price, to at least one second distributee participant" is not taught or suggested by a commission that only involves a payment to a single sales person (i.e., the sales person involved in the sale) and no second sales person at all. The recited limitation is not taught or suggested by paychecks.

Paychecks are provided to an employee based on salary agreements, hourly wage agreements, or performance agreements for that employee. Some paychecks may include commissions, which are discussed above. Paychecks are given to the employee that satisfies the agreement with the employer and not any second person. Accordingly, "distributing at least a portion of profits earned because of the deviation of the price of the outlier-price trade from the benchmark price, to at least one second distributee participant" is not taught or suggested by a paycheck that only involves a payment to a single person (i.e., the employee that fulfills an employee agreement) and no second person at all.

Bonus payments are provided to employees as a reward or incentive for performance of the respective employee's duties. Bonuses generally act similarly to commissions but may not be based on a per sale basis, but rather are generally provided at the end of a year or end of a large project. Bonuses are given to an employee that performs his or her respective duties and not to any second person. Accordingly, "distributing at least a portion of profits earned because of the deviation of the price of the outlier-price trade from the benchmark price, to at least one second distributee participant" is not taught or suggested by a bonus that only involves a payment to a single person (i.e., the employee that fulfills his or her duties) and no second person at all.

Moreover, there is no teaching or suggestion in the evidence without any evidentiary support regarding commissions, paychecks, and bonuses related in any way to distributing "profits earned because of the deviation of the price of the outlier-price trade from the benchmark price." The Final Office Action makes no statement to the contrary.”

**(10) D. Response:**

As Appellant points out above, it is known in the art for employees' bonuses, commissions and paychecks to be based upon certain criteria. These criteria include, for

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example, performance to duties, salary agreements, performance agreements, etc. The Examiner would include the economic feasibility of the employer to pay such things, which ultimately requires the *employers* to make a profit in order to provide said bonuses, etc. It is considered that the employees with the best performance would be compensated accordingly, i.e. bigger bonuses. Said bonus is probably not equal to the amount of excess profit the employee actually made for the employer, hence a portion of that profit is distributed to the other employees as their bonuses as well. This is considered the act of distributing at least a portion of profits earned. For example, let's look at the following situation between 3 traders at the same firm. Trader A trades commodity A and earns \$1000 profit for his firm, Trader B trades commodity A and earns \$100,000 profit for the firm, Trader C trades commodity A and loses \$1000 for the firm. The overall profit to the firm is \$100,000. At the end of the year the firm provides bonuses based on profit and performance. So Trader A gets a bonus based on his \$1000 profit, Trader B should get the biggest bonus and Trader C would get none, or at least a lot less than either Trader A or B to make the bonus system equitable. None of these traders would actually receive the full profit because they work for the firm and it is the firm's money. Therefore a portion of that \$100,000 profit made from Trader B (first distributee participant) will be distributed to other traders within the same firm as bonuses. Accordingly Trader A (second distributee participant) would receive a distribution of at least a portion of the profits earned.

**(10) E. In Section VII.C.4. (beginning on page 17) Appellant argues on page 18:**

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“the monitoring comprises sampling the trading prices at pre- determined intervals.”

Accordingly, the Final Office Action and the Prior Paper fail to address or even mention the limitations of dependent claim 15. Therefore, the Final Office Action fails to make a prima facie case for the rejection of claim 15 over the combination of Beuttell and the evidence without any evidentiary support.”

**(10) E. Response:**

1. Beuttell clearly discloses sampling at predetermined intervals in, for example, page 3, lines 5-20 reproduced immediately below.

“In one embodiment of the invention, the volume benchmark may be proportional to (and preferably is equal to) the daily volume of trade in the commodity which takes place over a fixed preceding period. For example, the volume benchmark may be constant for a period of a calendar month, at a value corresponding to the average daily volume of trade in the commodity in a proceeding a calendar month. Thus, the volume benchmark for each day in February would correspond to the average daily volume of trade in January, and so on.

In a preferred embodiment, the volume benchmark is a moving average volume of a number of preceding time periods, for example is proportional to (or is equal to) a moving average of the daily volume of trade in the commodity which takes place over a preceding period (for example 30 days)”

2. **See also Claim 3 on page 47, reproduced immediately below:**

“3. A system as in claimed Claim 2, wherein

a) the said fixed first period is a day and the said fixed second period is a calendar year, a 20-day period, or a calendar month, or wherein,

b) the said fixed first period is a week and the said fixed second period is a calendar year, a 4-week period, or a calendar month, or wherein

c) the said fixed first period is a calendar month, or a 4-week period and the said fixed second period is a calendar year.”

**(10) F. In Section VII.C.5. (beginning on page 18) Appellant argues on pages 18-19:**

“Claim 16 recites, in part: monitoring for prices remaining stable within a relatively small percentage range.

The Prior Paper rejects claims 16 stating that this limitation is inherent in Beuttell. See Prior Paper page 8. However, the Prior Paper does not comply with the requirements of inherency by providing extrinsic evidence to make it clear that the missing matter is necessarily present in the reference. Rather, the Prior Paper only shows that the limitation

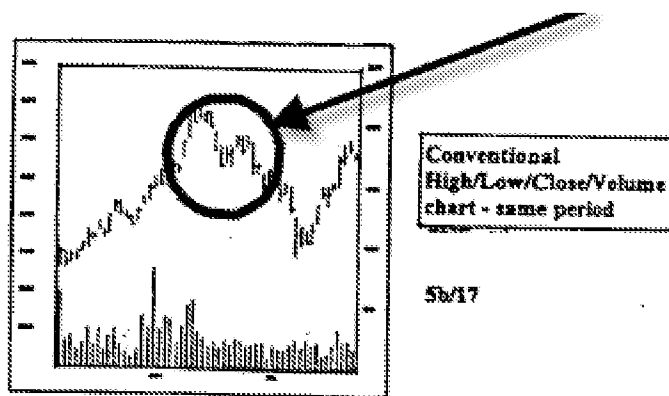
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is possible and accordingly fails to show that the limitation is inherent in the teaching of Beuttell.

Therefore, the Final Office Action fails to make a prima facie case for the rejection of claim 16 over the combination of Beuttell and the evidence without any evidentiary support.”

**(10) F. Response:**

Beuttell is dynamically tracking (i.e. monitoring) price movements of traded commodities over a period of time. Accordingly, during this period of time it is statistically impossible for the claimed situation NOT to happen. That is, at some point during this period of time the prices will remain stable. See for example, the indicated area of Figure 8 reproduced immediately below.



**(10) G. In Section VII.C.6. (beginning on page 19) Appellant argues on page 19:**

“Dependent claim 17 recites “the trading prices include prices for trades occurring after the outlier-price trade.” Dependent claim 23 recites “the prices monitored include prices for trades occurring after the outlier-price trade.” Neither Beuttell nor the evidence without any evidentiary support makes any mention of basing a distribution of profits for a trade on a price of trades that occur after the trade.”

**(10) G. Response:**

Beuttell is dynamically tracking (i.e. monitoring) price movements of traded commodities over a period of time including trades occurring AFTER and outlier.

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Accordingly, during this period of time *it is statistically impossible for the claimed situation NOT to happen*. That is, at some point during this period of time an outlier will occur yet tracking continues. See for example, the indicated area of Figure 9 reproduced immediately below.

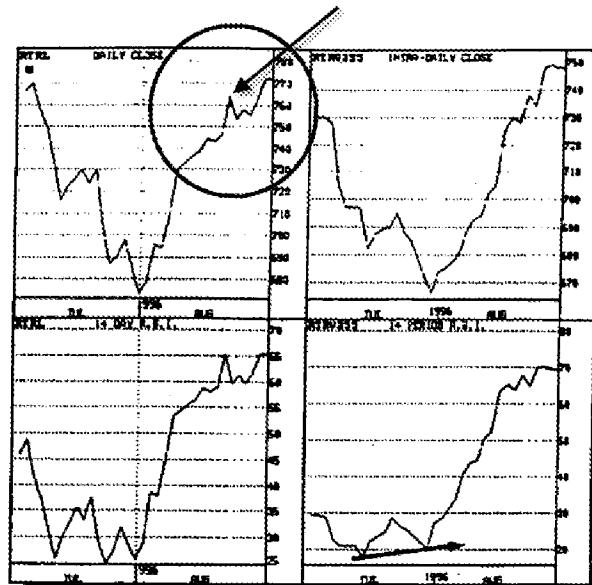


Figure 9

**(10) H. In Section VII.C.7. (beginning on page 20) Appellant argues on page 20:**

“Currently pending claim 32 as amended by the Prior Amendment and reproduced in the Latest Amendment recites, in part:

The method of claim 2, further comprising distributing the at least the portion of the profits attributable to the deviation to the at least one second distributee participant of the plurality of distributee participants based at least in part on a proportion of market share attributable to the at least one second distributee market participant.

Moreover, the Prior Paper rejects claim 32 stating that it is inherent in Beuttell. However, the Prior Paper does not comply with the requirements of inherency by providing extrinsic evidence to make it clear that the missing matter is necessarily present in the reference.”

**(10) H. Response:**

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See the discussion set forth in section (10) D. above wherein it is explained how bonuses and commissions are based upon how well a person fulfills their duties which would include “market share”. Market share is nothing more than how much of the market a trader controls. It stands to reason, common sense and equitable distribution that a person who does more (performs better) should be compensated more than a person who does or contributes less. This is akin to Performance Based Compensation.

**(10) I. In Section VII.C.8. (beginning on page 21) Appellant argues on page 21:**

“Currently pending claim 33 as amended by the Prior Amendment and reproduced in the Latest Amendment recites: The method of claim 6, wherein the monitoring further comprising monitoring a plurality of trading prices, wherein the instruments or items including at least electricity, wherein the monitoring of prices comprise sampling the plurality of trading price at pre\- determined intervals, and wherein the method further comprising maintaining a running period of the sampled trading prices falling within a range, to determine a mode among the samples of a running period the mode corresponding to the benchmark price. Accordingly, the Final Office Action and the Prior Paper fail to address or even mention the limitations of current or previously pending dependent claim 33. “

**(10) I. Response:**

“Mode” is a statistical term referring to the most frequently occurring term in a set of numbers. Beuttell discusses how the benchmark is determined on, for example, page 4, lines 5-20 reproduced immediately below:

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The system according to the invention employs an appropriately programmed computer to derive the volume benchmark, and to implement the other calculations and manipulations necessary, as well as to display the resulting graphical indication. The particular way in which this is implemented in computer software is well within the capabilities of one of average skill in the art, from the general description herein. In general, this will involve a database to configure real-time data into volume units, and to store details of the said units. The computer system preferably also provides for more conventional analysis methods, in addition to methods employing the system of the invention. Figure 25 is a schematic representation of a suitable user interface.

Again, statistically speaking, at some point the benchmark will be the mode. This is statistically impossible to prevent. Furthermore it is clear on its face that determining a “mode” is nothing more than one calculation that one of **average** skill in the art would understand as one statistical process of determining the benchmark.

**(10) J. In Section VII.C.9. (beginning on page 22) Appellant argues on page 20:**

“However, the Prior Paper never even mentions any limitations of any of claims 20, 24, and 33, but instead only makes a broad statement about all pending claims being rejected under 35 USC § 102. See Prior Paper page 5. Accordingly, by failing to mention even a single limitation of any of claims 20, 24, and 33 the Prior Paper failed to examine these claims, and, the Final Office Action, by incorporating the Prior Paper also failed to examine these claims.

Therefore, because the Final Office Action failed to make any examination of claims 20, 24, and 33, the Final Office Action fails to make a prima facie case for the rejection of claims 20, 24, and 33 over the combination of Beuttell and the evidence without any evidentiary support under 35 USC § 102.”

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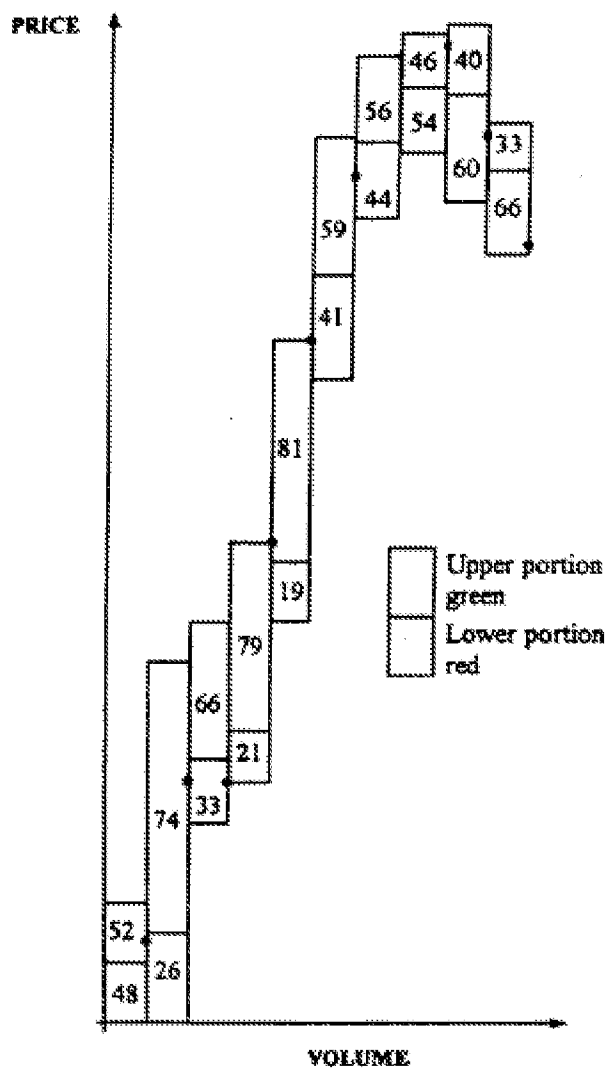
**(10) J. Response:**

**Claim 20** recites “wherein the benchmark price includes a range of benchmark trading prices.” Beuttell clearly shows a range of benchmark prices in, for example, page 35, reproduced immediately below wherein it is understood that quasi-static benchmark connotes a range of benchmark trading prices because the benchmark is only quasi or partly static, accordingly it includes a range of benchmarks.

The visual significance is achieved by effectively comparing  
10 the surface area and relative positioning of adjoining units.  
By using the Range calculations of price and time for the  
surface area, and the direction of the closing price as an  
approximation for relative positioning, we can now derive a  
mathematical reading for each unit. (Where a quasi-static  
15 benchmark is used, and the long-term trend is strong, there  
are arguments for using the Chain & figures instead, because  
of distortions arising from a stretched relationship between  
benchmark and current price ranges after significant price  
appreciation). I have called this reading the Trend Strength  
20 (TS) reading and the TS Index (TSI) is a moving average of  
individual TS readings. The formula for TS is:

See also Figure 21 reproduced immediately below which clearly includes a range  
of benchmark trading prices.:

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The rejection of **Claim 24** from page 8 of the 8/15/2007 Non-Final Office action is reproduced immediately below.

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Regarding claims 17, 24 and 32 and the limitation wherein the prices monitored to determine a benchmark price include prices for trades occurring after the outlier-price trade, again Beutell inherently includes this limitation because it is monitoring the prices continuously which would include trades performed after the outlier-price.

**Claim 33** is addressed in section (10) I. above.

**(10) K. In Section VII.D.3. (beginning on page 24) Appellant argues on page 24:**

“Independent claim 2 is directed to a respective process that includes actions performed by a particular machine as specifically recited in the claims. In particular, independent claim 2 specifically recites, in part: "by computer, identifying a trade of a traded instrument or item occurring at an outlier price deviating from a benchmark price" Accordingly, the process is tied to a particular machine: the recited computer. Therefore, independent claim 2 satisfies the particular machine test established in Bilski.”

**(10) K. Response: Claim 2 was NOT rejected under 35 USC 101.**

**(10) L. Regarding section VII.D.5. on page 26, Claim 18 was NOT rejected under 35 USC 101**

**(10) M. Regarding section VII.D.6. on page 27, Claim 18 was NOT rejected under 35 USC 101**

**(10) N. In Section VII.E.3. (beginning on page 29) Appellant argues on pages 29-30:**

“In rejecting claims 2, 4, 6, 7, 9, 10, 13-20, 22-29, and 32-33, the Examiner broadly points to CAA. The Final Office Action makes one citation to a minor section of CAA but appears to rely upon other not cited portions of CAA. CAA is an entire act of Congress. Acts of Congress are complex and CAA recites many elements not invented by Applicants. Therefore, the Final Office Action is required to cite particular sections relied upon.

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The Final Office Action also broadly points to State Laws. State Laws is a summary of each the price gouging laws in the 50 states. The Final Office Action does not cite sections of State Laws. State Laws is a complex reference that recites many elements not invented by Applicants. Therefore the Final Office Action is required to cite particular sections relied upon.

By citing the entirety of CAA and State Laws, the Final Office Action fails to comply with 37 C.F.R. § 1.104(c)(2) and is insufficient to raise any rejections using these references.”

**(10) M. Response:**

Per MPEP 2260 [R-5], and 37 CFR 1.104(c)(2)

“In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, *if not apparent*, must be clearly explained and each rejected claim specified” (Emphasis added)

*In re Bozek*, 163 USPQ 545 (CCPA 1969)

Having established that this knowledge was in the art, the examiner could then properly rely, as put forth by the solicitor, on a conclusion of obviousness ‘from common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference. (Emphasis added)

*In re Dance* (CA FC) 48 USPQ2d 1635 (10/30/1998)

When the references are in the same field as that of the applicant's invention, knowledge thereof is presumed.

The pertinence of each reference attached to the 8/15/2007 PTO-892 appears readily apparent to one of ordinary skill in the art of finance. The Examiners construes outlier-price trades and excess profits to connote price gouging. As stated and explained

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in both previous Office actions, Appellants invention appears to be nothing more than a machine implemented method of enforcing the antitrust laws in the trading environment.

Accordingly knowledge thereof is presumed.

**(10) 0. In Section VII.E.4.b (beginning on page 30) Appellant argues on page-30:**

“The Prior Paper never discusses the current limitations of claims 2 and 18. As discussed above, Claims 2 and 18 were amended in the Prior Amendment after the Prior Paper. Accordingly, the Prior Paper does not discuss the currently pending claim limitations that include a trade involving a first distributee participant and distributing at least a portion of profits earned from the trade to a second distributee participant.

Further, the Final Office Action, in discussing arguments made by Applicants in the Latest Amendment states: "the fine itself is the distribution to the at least one second participant." See Final Office Action pages 4 and 5. By discussing only a second participant, the Final Office Action again fails to address the actually pending claim limitation of a "second distributee participant" in both claims 2 and 18.”

**(10) 0. Response:**

Page 3 of 8 of the Clayton act, Sec. 15. Suits by persons injured (a) amount of recovery; prejudgment interest reproduced immediately below states

“Except as provided in subsection (b) of this section, any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee. “ (Emphasis added)

Accordingly, upon successful application of the law, the at least one second distributee participant (could be more than one participant suing) will recover threefold damages from the at least one first distributee. This recovery of threefold damages will affect and draw upon at least a portion of the profits of the first distributee. That is, the lawsuit will require the first distributee to hire representation and pay fines. The money

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from these fines must come from somewhere which includes any profit. Therefore at least a portion of the profits earned because of the deviation of the price are distributed to at least one second distributee participant.

**(10) P. In Section VII.E.4.c. (beginning on page 31) Appellant argues on page 32:**

“Not only do each of CAA, State Laws and Caffrey not disclose "distributing at least a portion of profits earned because of the deviation of the price of the outlier-price trade from the benchmark price, to at least one second distributee participant of the plurality of distributee participants in the market for the traded instrument or item," they each teach away from the claimed embodiments. CAA, State Laws and Caffrey teach away from earned because of the deviation of the price of the outlier-price trade from the benchmark price by making the charging of excess or discriminatory prices illegal. For example, CAA teaches that sometimes charging increased prices is illegal. See CAA page 1 State Laws teaches that states may institute a penalty for selling at certain price conditions See State Laws, trigger event/prohibited acts column. Caffrey teaches that energy producers may be fined or jailed for charging high prices See Caffrey abstract and page 3.

Accordingly because none of CAA, State Laws, and Caffrey teaches or suggest the limitation of "distributing at least a portion of profits earned because of the deviation of the price of the outlier-price trade from the benchmark price, to at least one second distributee participant of the plurality of distributee participants in the market for the traded instrument or item," and each of the references teaches away from the claimed embodiments, the combination of CAA, State Laws, and Caffrey does not teach or suggest this limitations of independent claim 2..”

**(10) P. Response:**

***In re Bozek***, 163 USPQ 545 (CCPA 1969)

Reference disclosure must be evaluated for all that it fairly suggests and not only for what is indicated as preferred

***In re Shepard***, 138 USPQ 148 (CCPA 1963)

In considering disclosure of reference patent, it is pertinent to point out not only specific teachings of patent but also the reasonable inferences which one skilled in the art would logically draw therefrom.

First, the cited references show that price gouging exists whether or not it's legal or preferred.

Second, the application and successful outcome of a second distributee participant suing a first distributee participant causes the distribution of at least a portion of the first distributee participant's profit to the second distributee participant.

Third, when a state imposes a fine on a first distributee participant, this fine is considered to be paid from at least a portion of the profits of the first distributee participant because it was an unexpected cost which must be paid from somewhere. This fine goes into the states coffers. Then, when the state pays (from its coffers) a second distributee participant for services rendered, at least a portion of the profits earned are distributed to at least one second distributee participant because at least a portion of the payment was garnered from the fines paid to the state, of which the state may use in whichever manner they see fit..

Fourth, there is no explicit time requirement for the limitation "distributing at least a portion of profits..." Accordingly **the act of distribution can be accomplished at any time** and still satisfy the claimed limitation.

**(10) Q. In Section VII.E.4.d. (beginning on page 34) Appellant argues on page 34:**

"The Final Office Action suggests that application of laws discussed in CAA, State Laws and Caffrey make claims 2 obvious because of a fine imposed on price gougers. See Final Office Action page 5. The Final Office Action states:

A price gouger once caught and convicted will be fined. That fine can be considered "a portion of the profits" and the fine itself is the distribution to at least one second participant.

See Final Office Action page 5. As discussed above, the Final Office Action fails to address the actual limitations which state "a second distributee participant," but

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assuming for the sake of argument that the Final Office Action did address the actual claim limitations, the Final Office Action still fails to provide any evidence of any application of any of the laws of CAA, State Laws, and Caffrey to support the finding of fact made in the above cited section. No evidence at all cannot possibly meet the substantial evidence standard required to make any finding of fact.

Accordingly, by failing to provide any evidence at all in support of the above cited finding of fact, the Final Office Action fails to make a prima facie showing of obviousness of claims 2 and 18 under 35 USC § 103(a). Each of the remaining claims depends from at least one of independent claim 2 and independent claim 18 and the Final Office Action has failed to make a prima facie case for the rejection of these claims for at least similar reasons.

**(10) Q. Response:**

The Examiner provided reasoning that one of ordinary skill would understand the ramifications and application of the laws. See the explanation set forth in section (10) P.

Response above.

**(10) R In Section VII.E.4.e. (beginning on page 34) Appellant argues on page 35:**

“Instead, the application of the laws described in these references results in penalties to energy generators or price discriminators as discussed above. Such penalties are paid to governments or customers, not to a second distributee participant as recited in the claims. Further, the because the laws do not teach or suggest profits earned because of the deviation of the price of the outlier-price trade from the benchmark price, as discussed above, the application of the laws do not teach or suggest profits earned because of the deviation of the price of the outlier-price trade from the benchmark price.”

**(10) R. Response:**

The Examiner provided reasoning that one of ordinary skill would understand the ramifications and application of the laws. See the explanation set forth in section (10) P.

Response above.

**(10) S. In Section VII.E.5. (beginning on page 36) Appellant argues on page 36:**

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“Claim 6 recites, in part: “determining the benchmark price at least in part by monitoring trading prices over a time interval.” The Prior Paper rejects claims 6 stating that this limitation is inherent without citing a reference to which it is inherent. See Prior Paper page 10. However, the Prior Paper does not comply with the requirements of inherency by providing extrinsic evidence to make it clear that the missing matter is necessarily present in the reference. Rather, the Prior Paper only asserts that the limitation is possible and accordingly fails to show that the limitation is inherent.

**(10) S. Response:**

First, in order to bring suit against the first distributee participant it must be proven that they did indeed exceed the benchmark price which inherently requires monitoring trading prices over the time interval that the offense occurred. See CAA page 6 of 8 section 15d. Measurement of damages. reproduced immediately below.

 **Sec. 15d. Measurement of damages (§ 4d of the Clayton Act)**

In any action under section 15c(a)(1) of this title, in which there has been a determination that a defendant agreed to fix prices in violation of sections 1 to 7 of this title, damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges, or by such other reasonable system of estimating aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, persons on whose behalf the suit was brought.

Second, Caffrey clearly discloses on page 1 of 4, second paragraph “...review generators bids for possible sanctions once a price hits a certain threshold: the lower of either three times a 90 day average of prices for that plant , or \$100 a megawatt more than average”. Clearly prices are being monitored over the 90 day period.

**(10) T. In Section VII.E.6. (beginning on page 36) Appellant argues on pages 36-37:**

“Claim 10 recites, in part: “the benchmark price includes a range of benchmark trading prices.” The Prior Paper rejects claims 10 stating that this limitation is inherent without citing a reference to which it is inherent. See Prior Paper page 11. However, the Prior Paper does not comply with the requirements of inherency by providing extrinsic

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evidence to make it clear that the missing matter is necessarily present in the reference. Rather, the Prior Paper only asserts that the limitation is possible and accordingly fails to show that the limitation is inherent.”

**(10) T. Response:**

Per the Non-Final Office action:

Claim 10 and the limitation wherein the benchmark price relative to which deviation of the outlier-priced trade is evaluated includes a range of benchmark trading prices is considered inherent in that the benchmark will change as the market fluctuates. That is, the benchmark cannot statistically remain the same and will wander around the market accepted value.

It is statistically impossible for the benchmark to remain the same and therefore a range of benchmarks will be produced based on when and how they are calculated. See the explanation set forth in at least section (10). S. above wherein the 90 day average will change every time it is figured.

**(10) U. In Section VII.E.7. (beginning on page 37) Appellant argues on page 37:**

“Claim 15 recites, in part: "monitoring comprises sampling the trading prices at pre-determined intervals." The Prior Paper rejects claims 15 stating that this limitation is inherent without citing a reference to which it is inherent. See Prior Paper page 11. However, the Prior Paper does not comply with the requirements of inherency by providing extrinsic evidence to make it clear that the missing matter is necessarily present in the reference. Rather, the Prior Paper only asserts that the limitation is possible and accordingly fails to show that the limitation is inherent.

Moreover, as discussed above, the Prior Paper never discusses the limitation of currently pending claim 15. Rather, dependent claim 15 was amended to the current form in the Prior Amendment after the mailing of the Prior Paper and reproduced in the Latest Amendment. Accordingly, the Prior Paper only addresses a prior version of claim 15.

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**(10) U. Response:**

As set forth in section (10) S. above, Caffrey discloses 90 day averages which is considered a predetermined interval.

**(10) V. In Section VII.E.8. (beginning on page 38) Appellant argues on page 38:**

“Claim 16 recites, in part: “the monitoring includes monitoring for prices remaining stable within a relatively small percentage range.” The Prior Paper rejects claims 16 stating that this limitation is inherent without citing a reference to which it is inherent. See Prior Paper page 11. However, the Prior Paper does not comply with the requirements of inherency by providing extrinsic evidence to make it clear that the missing matter is necessarily present in the reference. Rather, the Prior Paper only asserts that the limitation is possible and accordingly fails to show that the limitation is inherent.”

**(10) V. Response:**

See the explanation set forth in section (10) F. above where it is understood that it is statistically impossible for this situation NOT to happen at some point in time.

**(10) W. In Section VII.E.9. (beginning on page 38) Appellant argues on pages 38-39:**

“Claim 17 recites in part: “the trading prices include prices for trades occurring after the outlier-price trade.” Claim 24 recites in part: “the prices monitored include prices for trades occurring after the outlier-price trade.” The Prior Paper rejects claims 17 and 24 stating that these limitations are inherent without citing a reference to which it is inherent. See Prior Paper page 12. However, the Prior Paper does not comply with the requirements of inherency by providing extrinsic evidence to make it clear that the missing matter is necessarily present in the reference. Rather, the Prior Paper only asserts that the limitation is possible and accordingly fails to show that the limitation is inherent.”

**(10) W. Response:**

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Per the Office action “Regarding claims 17, 24 and 32 and the limitation wherein the prices monitored to determine a benchmark price include prices for trades occurring after the outlier-price trade one must understand that the laws are applicable at all times both during and after the laws are broken. Accordingly this is also an inherent limitation to the laws.

Again, the systems and methods described by the references are applicable at all times, i.e. before, during and after trades are made. Further trades made after the outlier must be included in the calculation of the benchmark in order to determine whether the outlier was indeed an outlier or merely a market shift and thus the new price period.

**(10) X. In Section VII.E.10. (beginning on page 39) Appellant argues on page 38:**

“Claim 32 recites, in part:

"distributing the at least the portion of the profits attributable to the deviation to the at least one second distributee participant of the plurality of distributee participants based at least in part on a proportion of market share attributable to the at least one second distributee market participant."

The Prior Paper rejects claims 32 stating that this limitation is inherent without citing a reference to which it is inherent. See Prior Paper page 12. However, the Prior Paper does not comply with the requirements of inherency by providing extrinsic evidence to make it clear that the missing matter is necessarily present in the reference. Rather, the Prior Paper only asserts that the limitation is possible and accordingly fails to show that the limitation is inherent..”

**(10) X. Response:**

CAA, pages 3 and 5 of 8 sections 13b and 15d. are reproduced immediately below.

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 **Sec. 13b. Cooperative association; return of net earnings or surplus**

Nothing in this Act shall prevent a cooperative association from returning to its members, producers, or consumers the whole, or any part of, the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to, or through the association.

 **Sec. 15d. Measurement of damages (§ 4d of the Clayton Act)**

In any action under section 15c(a)(1) of this title, in which there has been a determination that a defendant agreed to fix prices in violation of sections 1 to 7 of this title, damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges, or by such other reasonable system of estimating aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, persons on whose behalf the suit was brought.

Accordingly, the second participating distributees who win an injunction will be compensated according to their loss (market share).

**(10) Y. In Section VII.E.11. (beginning on page 40) Appellant argues on page 40:**

“Dependent claim 33 depends from independent claim 2 and the arguments above regarding independent claim 2 apply to dependent claim 33. Further, although the Final Office Action does not cite any references to reject dependent claim 33 under 35 USC § 103(a) over the combination of CAA, State Laws, and Caffrey, as discussed above, or mention any of the limitations of dependent claim 33, the Final Office Action state that claim 33 is rejected under 35 USC § 103(a) for the same reasons stated in the Prior Paper. See, Final Office Action page 7.

As discussed above, the Prior Paper never discusses the limitation of currently pending claim 33. Rather, dependent claim 33 was amended to the current form in the Prior Amendment after the mailing of the Prior Paper and reproduced in the Latest Amendment. Accordingly, the Prior Paper only addresses a prior version of claim 33.”

**(10) Y. Response:**

Claim 33 recites

“33. The method of claim 6, wherein the monitoring further comprising monitoring a plurality of trading prices, wherein the instrument or item including

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at least electricity, wherein the monitoring of prices comprise sampling the plurality of trading price at pre-determined intervals, and wherein the method further comprising maintaining a running period of the sampled trading prices falling within a range to determine a mode among the samples of a running period the mode corresponding to the benchmark price.”

Claim 33 is a conglomeration of claims 2, 6, 9 and 14 and obviated by the same reasons reproduced immediately below from the 8/15/2007 Non-Final Office action.

“Regarding claim 6 and the limitation the monitoring of prices comprising sampling the trading price at pre-determined intervals, this limitation is considered inherent in that it must be performed in order to establish what the normal consumer cost is in order to determine artificial price inflation or price gouging is taking place.”

“Claim 9 and the limitation wherein the benchmark price is determined based at least in part by determining a mode-trading price is considered to be a statistically obvious manner of determining a benchmark, see for example, Caffrey page 3, 4<sup>th</sup> paragraph.”

“Regarding claims 14 and 22 and the limitation wherein the instrument or item includes one or more of electricity, natural gas, energy, and oil, the laws apply to any commodity. “

See also CAA Sec. 15d. to show that the damages may be proved and assessed in the aggregate by statistical or sampling methods.

 **Sec. 15d. Measurement of damages (§ 4d of the Clayton Act)**

In any action under section 15c(a)(1) of this title, in which there has been a determination that a defendant agreed to fix prices in violation of sections 1 to 7 of this title, damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges, or by such other reasonable system of estimating aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, persons on whose behalf the suit was brought.

**(10) Z. In Section VII.E.12. (beginning on page 40) Appellant argues on pages 40-41:**

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“Dependent claims 13, 20, and 33 depend from a respective one of independent claims 2 and 18 and the arguments above regarding the respective one of independent claims 2 and 18 apply to dependent claims 13, 20, and 33. Further, although the Final Office Action does not cite any references to reject dependent claims 13, 20, and 33 under 35 USC § 103(a) over the combination of CAA, State Laws, and Caffrey, as discussed above, or mention any of the limitations of dependent claims 13, 20, and 33, the Final Office Action state that claims 13, 20, and 33 are rejected under 35 USC § 103(a) for the same reasons stated in the Prior Paper. See, Final Office Action page 7.

However, the Prior Paper never even mentions any limitations of any of claims 13, 20, and 33, but instead only makes a broad statement about all pending claims being rejected under 35 USC § 103(a). See Prior Paper page 9. Accordingly, by failing to mention even a single limitation of any of claims 13, 20, and 33, the Prior Paper failed to examine these claims, and, the Final Office Action, by incorporating the Prior Paper also failed to examine these claims.

Therefore, because the Final Office Action failed to make any examination of claims 13, 20, and 33, the Final Office Action fails to make a prima facie case for the rejection of claims 13, 20, and 33 over the combination of CAA, State Laws, and Caffrey under 35 USC § 103(a).”

**(10) Z. Response:**

Both prior Office actions clearly state that these claims are rejected by the references. Upon review of the references cited, one of ordinary skill in the art would readily understand that the claimed limitations are found within and obviated by the references as cited and explained elsewhere above as well as below.

**Claim 13** recites “implementing the method in and electronic trading platform.” CAA, page 1 of 8, Sec. 13. (a) First sentence states “It shall be unlawful for any person engaged in commerce...” which includes electronic trading platforms because this simply another place where commerce is occurring.

**Claim 20** recites “wherein the benchmark price includes a range of benchmark trading prices.” which is encompassed by **Claim 10** which recites the limitation “wherein the benchmark price relative to which deviation of the outlier-priced trade is

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evaluated *includes a range of benchmark trading prices*” and is considered inherent in that the benchmark will change as the market fluctuates. That is, statistically the benchmark cannot remain the same and will wander around the market accepted value.

**Claim 33** is addressed in section (10) Y. above.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/DANIEL LAWSON GREENE JR./

Examiner, Art Unit 3694

2010-05-08

Conferees:

/Mary Cheung/

Primary Examiner, Art Unit 3694

/James P Trammell/

Supervisory Patent Examiner, Art Unit 3694

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